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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,301	04/02/2004	Susan Y. Davis	P001	1882

7590

07/22/2005

Susan Y. Davis  
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EXAMINER

DAVIS, CASSANDRA HOPE

ART UNIT

PAPER NUMBER

3611

DATE MAILED: 07/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/817,301

Applicant(s)

DAVIS ET AL.

Examiner

Cassandra Davis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 8 and 10-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 9-11, 16-26 and 34-37 is/are rejected.
- 7) ☐ Claim(s) 5, 8, 12-15 and 27-33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This office action is in response to the amendment filed April 22, 2005, the finality of that action is withdrawn.

#### ***Claim Rejections - 35 USC § 112***

Claims 7, 8, 10, 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7, 9, 10, and 11 are dependent from canceled claim 6.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-4, 7, 9-11, 16-26, 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks, U. S. Patent 955,114 in view of Wooden Chart

<http://web.archive.org/web/20030207044414/watchmegrowup.com/superstore.htm>.

Brooks teaches a bookmark comprising a narrow strip of resilient celluloid material having a calendar on one side and a measuring rule on the reverse side. (lines 21-29).

The examiner considers the measuring rule to correspond to the growth chart. It is

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inherent that a measuring rule can be any desired length. Brooks does not teach a pocket to receive cards.

2. Wooden Chart teaches a growth card having a measuring scale and acetate photo sleeves for receiving photos or cards.

3. It would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the device taught by Brooks with pockets or sleeve as taught by Wooden Charts to provide a means to receive an additional object such as a photo.

With respect to claims 3 and 4, Brooks teaches a hook-like member or holder 2 for hanging the marker from the edge of a page of a book.

With respect to claim 25, Brooks teaches printing directly on the celluloid material or printing on a piece of paper and adhering the paper to the celluloid material.

With respect to claim 7, Brooks teaches an area below the rule area to accommodate addition indicia such as advertisement.

With respect to claims 16, 19, the sleeve taught by Wooden Chart can be use to holder header card

With respect to claim 18, the examiner considers the calendar to inherently correspond to the count down chart.

With respect to claims 20-21, cards are not positively claimed. Therefore claim 20 is rejected over Brooks in view of Wooden Chart.

With respect to claim 22-23, the photo taught by Wooden Chart corresponds to the pocket card.

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Claims 5, 8, and 27, it would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the device taught by Brooks and Wooden Charts as long as desired to provide a means for measuring a larger area.

4. Claims 1, 2, 6, 7, 9-11, 24-26, 36, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodrich, U. S. Patent 365,916 in view of Wooden Chart.

Goodrich teaches a combined ruler and calendar comprising a thin strip of wood, rubber, or other materials *a* with a calendar *e* disposed on one side and ruler marking *f* printed on the opposite side. The examiner considers the measuring rule to correspond to the growth chart. It is inherent that a measuring rule can be any desired length.

Goodrich does not teach a pocket to receive cards.

5. Wooden Chart teaches a growth card having a measuring scale and acetate photo sleeves for receiving photos or cards.

6. It would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the device taught by Goodrich with pockets or sleeve as taught by Wooden Charts to provide a means to receive an additional object such as a photo.

7. Claims 5, 8, and 27, it would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the device taught by Goodrich and Wooden Charts as long as desired to allow for measuring a larger area.

***Allowable Subject Matter***

8. Claims 5, 8, 12-15, 27-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

9. Applicant's arguments with respect to claims 1 and 24 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cassandra Davis whose telephone number is 571-272-6642. The examiner can normally be reached on Monday-Friday 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free).

  
Cassandra Davis  
Primary Examiner  
Art Unit 3611

CD

May 5, 2005